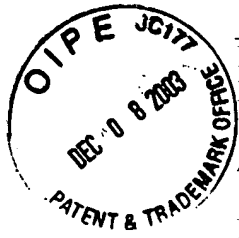


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:  
Lothar E.S. BUDIKE, Jr.

Application No.: 09/299,124

Filed: April 26, 1999

Art Unit: 2161

For: MULTI-UTILITY ENERGY CONTROL AND  
FACILITY AUTOMATION SYSTEM WITH  
DASHBOARD HAVING A PLURALITY OF  
INTERFACE GATEWAYS

Examiner: Thomas A. Dixon

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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GROUP 3600

SECOND DECLARATION OF LOTHAR E.S. BUDIKE, JR.

I, Lothar E.S. Budike, Jr., declare as follows.

1. I am the sole inventor of the subject matter claimed in the above-identified patent application, which has a filing date of April 26, 1999.
2. I assigned all of my rights in this application, including any patent issuing from this application, to Powerweb, Inc (herein "Powerweb").
3. At the time this application was filed, on April 26, 1999, to the present, without interruption, I have been the President and Chief Executive Officer (CEO) of Powerweb. As President and CEO, I have always had and continue to have full authority to

act on behalf of Powerweb on all intellectual property matters, including all matters relating to the prosecution of this patent application.

4. On October 2, 2001, the United States Patent and Trademark Office mailed out an Office Action relating to the present application. I understand that a Response to the Office Action was due no later than January 3, 2002, in order to avoid payment of any extension of time fees. As I stated in my earlier declaration dated June 6, 2002 (Exhibit A), I did not direct my attorney to file a timely Response to the Office Action. This was unintentional.

5. Subsequent to October 2, 2001, I exercised my authority by instructing our accountant to send a payment to our attorney to cover the cost of preparing and filing the Response. At this time, Powerweb had another, co-pending patent application (serial no. 09/628,855). Confusing the present patent application with the co-pending patent application, the payment was never sent to our attorney per my instructions, as there was no action required in the co-pending application. Consequently, our attorney did not prepare and/or file a Response.

6. I first learned that the present patent application was abandoned during a telephone conversation with our attorney in early May 2002. Our attorney explained that because the application was abandoned unintentionally, we could petition the Patent Office to revive the application. Under my instruction, our attorney prepared and filed that petition on June 6, 2002 (Exhibit B). The Petition was accompanied by my earlier Declaration, also dated June 6, 2002; a Petition fee pursuant to 37 CFR 1.17(m); a Response to the outstanding Office Action along with a 3 month Extension of Time fee pursuant to 37 CFR 1.17(a); and a Terminal Disclaimer along with the Terminal Disclaimer fee pursuant to 37 CFR 1.20(d).

7. I now understand that the Patent Office mailed out a Decision on August 5, 2002, dismissing the Petition (Exhibit C). I also understand that we had 2 months to respond to this Decision. However, I was in Europe the entire month of August and for part of September 2002. I first learned of the Decision dismissing the Petition in a November 12, 2002 letter from our attorney (Exhibit D). In that letter, our attorney suggested there was an earlier telephone call during which he informed me of the Decision dismissing the Petition. This is incorrect. Regardless, our attorney further suggested in the November 12, 2002 letter that in order to protect the invention, we should file a continuation-in-part application based on the aforementioned, co-pending patent application.

8. Soon after November 12, 2002, I had a telephone conversation with our attorney. During this telephone conversation, I terminated the relationship with our attorney.

9. We did not file a continuation-in-part application and, based on the November 12, 2002 letter and the subsequent telephone conversation with our attorney, I was under the mistaken belief that the present application was no longer revivable.

10. In November 2003, I engaged new (now present) counsel. During a meeting with our present counsel, I learned there was still an opportunity to revive the present application, as we never at any time intended to abandon this application.

11. After meeting with our present counsel, I obtained my previous attorney's files relating to the present patent application and the aforementioned, co-pending patent application. I point out that I had requested that our previous attorney provide these files on

several occasions subsequent to the termination of the relationship. However, my requests went unanswered. Upon reviewing these files with my present counsel, I learned that the files were substantially incomplete. I also learned for the first time that the Patent Office had mailed out, on October 2, 2002, an Office Action for the co-pending application. As our previous attorney never reported this Office Action to me, a Response to that Office Action was never prepared and/or filed. Accordingly, the co-pending application was, like the present patent application, unintentionally abandoned.

12. In late November 2003, in response to our unintentional abandonment of the present patent application, and the unintentional failure to file a timely Request for Reconsideration in response to the Decision dismissing our prior Petition to Revive, I instructed my present counsel to prepare and file a Request for Consideration.

13. Referring back to the August 5, 2002 Decision dismissing the June 6, 2002 Petition to Revive, I understand that the Patent Office rendering its decision to dismiss because "it is unclear whether Mr. Budike was the party in interest having apparent authority to direct the prosecution of the instant application." Accordingly, the Decision stated that "clarification is required as to the party having apparent authority to direct the prosecution of the instant application." Prior to October 2, 2001, Powerweb's Board of Directors decided that all non-recurring capital expenditures exceeding \$1000 should be verified by me and one other member of the Board. This decision did not affect the full authority I had, and continue to have, over all intellectual property matters, including all matters relating to the prosecution of the present patent application.

14. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:

12/4/2003  
\_\_\_\_\_  
Lothar E. S. Budike, Jr.